

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERIOUS J. JOHNSON,	§	
	§	No. 261, 2011
Petitioner Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	C.A. No. N11M-04-110
	§	Cr. ID No. 0304007340
Respondent Below,	§	Cr. ID No. 9709002535
Appellee.	§	

Submitted: August 3, 2011  
Decided: October 27, 2011

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**O R D E R**

This 27<sup>th</sup> day of October 2011, upon consideration of the opening brief filed by the appellant, Derious J. Johnson, and the motion to affirm filed by the appellee, State of Delaware, it appears to the Court that:

(1) In September 1997, the petitioner, seventeen-year old Derious J. Johnson, was arrested on several drug charges. Following an amenability hearing in the Family Court, the case was transferred to the Superior Court where Johnson eventually pled guilty to one charge of Possession with Intent to Deliver Heroin (hereinafter “the 1998 case”).<sup>1</sup>

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<sup>1</sup> For that conviction, Johnson was sentenced to the boot camp diversion program, twice found in violation of probation, and was discharged as unimproved in March 2001.

(2) In October 2003, following Johnson's conviction of Rape in the First Degree (hereinafter "the 2003 case"), the State sought to declare Johnson a habitual offender based, in part, on the 1998 case. On December 5, 2003, the Superior Court declared Johnson a habitual offender and sentenced him to life in prison.

(3) For the past several years, Johnson has argued, without success, that his Superior Court conviction in the 1998 case was invalid due to flaws in the underlying Family Court amenability proceeding.<sup>2</sup> Most recently, on April 25, 2011, Johnson filed a petition for a writ of habeas corpus on the basis that his conviction in the 1998 case was invalid and thus should not have qualified as a predicate offense when establishing his habitual offender status in the 2003 case.

(4) By order dated April 29, 2011, the Superior Court denied Johnson's habeas corpus petition for failure to state a claim upon which relief could be granted. This appeal followed. In furtherance of the appeal, Johnson requested the preparation at State expense of a transcript of the Family Court amenability hearing. By order dated June 16, 2011, the Superior Court denied Johnson's request.

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<sup>2</sup> See *Johnson v. State*, 2009 WL 4639333 (Del. Supr.) (affirming denial of postconviction relief); *Johnson v. State*, 2009 WL 1763264 (Del. Supr.) (affirming denial of postconviction relief and relief for correction or reduction of sentence); *Johnson v. State*, 2008 WL 4978291 (Del. Supr.) (affirming denial of habeas corpus relief).

(5) In his opening brief on appeal, Johnson challenges the Superior Court's denials of his habeas corpus petition and request for transcript at state expense. Johnson contends that, without a transcript of the amenability hearing, he is unable to substantiate his claims and prepare an adequate brief.

(6) After consideration of Johnson's opening brief and the State's motion to affirm, the Court concludes that the Superior Court committed no error when summarily dismissing Johnson's habeas corpus petition and denying his request for transcript at State expense. In both the 1998 case and the 2003 case, Johnson was tried in a court of competent jurisdiction and was validly committed to prison.<sup>3</sup> Johnson's current detention is lawfully based on two sentences, one imposed in the 2003 case and the other in 2001 when Johnson pled guilty to Robbery in the First Degree.<sup>4</sup>

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>3</sup> *Curran v. Woolley*, 104 A.2d 771, 773 (Del. 1954).

<sup>4</sup> *State v. Johnson*, Del. Super., Cr. ID No. 9912018785.